IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9934 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESH RAMJIBHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9934 of 2001

MR AR SHAIKH for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 9th August, 2001 passed by the

Commissioner of Police, Rajkot, in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. It is found that he is involved in five cases registered under the Bombay Prohibition Act. The detaining authority has also considered statements of two anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. By this petition, the petitioner seeks to challenge the order of detention on various grounds stated in the petition.

4. Learned Advocate Mr. Shukla submitted that the registered offences relate to theft and there is nothing on record to indicate that there was any disturbance to public order. He submitted that a representation was made to the detaining authority on 6.10.2001, which was rejected by the authority on 18.10.2001 and communicated to the detenu on 29.10.2001. He submitted that there is delay in considering the representation and therefore, it has infringed the right of the detenu in making an effective representation. He has relied on the decision in the case of Harish Pawha Vs. State of U.P. reported in AIR 1981 SC 1126. He submitted that the petition may be allowed and the detenu may be set at liberty.

5. Learned AGP Mr. S.S. Patel has opposed this petition.

6. Having regard to the rival side contentions raised before this Court, the contention raised by Mr. Shukla deserves to be accepted. The offence registered against the detenu relates to theft of hand-cart, which is punishable under Sec. 379 of the IPC. There is nothing to indicate any disturbance of public order. Statements came to be recorded on 5th August, 2001 and were verified on 7th August, 2001, where witnesses indicated disturbance to public order. The witnesses

expressed their fear from the detenu and prayed for anonimity. The authority has therefore exercised powers under Section 9(2) of PASA Act.

6.1 It transpires undisputedly that representation dated 6.10.2001 was received by the detaining authority on 8.10.2001. It was forwarded to the Government on 10.10.2001 and it was received on 15.10.2001 and decided on 18.10.2001. The decision was communicated by communication dated 19.10.2001, which was served on detenu on 29.10.2001, as is clear from the communication received by the detenu, which is placed on record. The affidavit-in-reply does not explain the delay caused in communicating the decision on the representation. Differently put, a representation dated 6.10.2001 was decided on 18.10.2001, but was communicated on 29.10.2001. The period between 18.10.2001 and 29.10.2001 has remained unexplained. This would vitally affect the right of the detenu envisaged under Art. 22(5) of the Constitution of India. The continued detention of the detenu therefore would stand vitiated, in the light of the decision in Harish Pawha Vs. State of U.P. (supra). The petition therefore deserves to be allowed.

7. The petition is therefore, allowed. Order of detention dated 9th August, 2001 passed by the Commissioner of Police, Rajkot is quashed and set aside. Detenu Dinesh Ramjibhai Desai be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

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